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JUL 17 2012

TEMPERATURE

Legend:

Date 5 = xxxxxxxxxxxxxxxxxxxxxxxxx

Date 6 = xxxxxxxxxxxxxxxxxxxxxx
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 Date 9 = xxxxxxxxxxxxxxxxxxxxxx

Dear xxxxxxxxxxxx:

This letter is in response to your letter dated xxxxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxxxx and xxxxxxxxxxxx, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code”).

The following facts and representations have been submitted under penalty of perjury in support of your request.

Taxpayer A, age 60, represents that he received a distribution from IRA X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a failure by Credit Union B to timely reissue a check for Amount D.

Taxpayer A was a participant in Plan X. On Date 1, Employer E went out of business and on Date 2 Taxpayer A got a job with Company C where he became a participant in Company C’s 401(k) plan.

On Date 3, Taxpayer A received a distribution from Plan X totaling Amount C and on Date 4 deposited Amount C into a five year IRA X Certificate of Deposit (CD) maintained with Credit Union B.

On Date 5, when the CD matured, Taxpayer A received a distribution check totaling Amount D in his name which he decided to roll over into Company C’s 401(k) Plan and inquired from Company C’s advisor about the address where to mail the check and asked if any paper work was required to be completed. Several e-mails went back and forth between Taxpayer A and Company C in the process of rolling over Amount D to Company C’s 401(k) Plan.

On Date 6, Taxpayer A received an e-mail from Trust T saying that in order to roll over Amount D the distribution check must be reissued and made payable to Trust T. Upon learning this, Taxpayer A, on Date 7, gave the check to the receptionist at Credit Union C and instructed her that the check needed to be reissued and made payable to Trust T.

Taxpayer A represents that Credit Union B began its process of reissuing the check on Date 8. Taxpayer A received the check on Friday evening of Date 9 which was one day before the end of 60-day rollover period. Trust T was closed for the weekend. Thus, Taxpayer A could not roll over Amount D within the 60-day period.

Based upon the foregoing facts and representations, you request that the Internal Revenue Service (the Service) waive the 60 day rollover requirement with respect to Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a rollover of Amount D was due to the delay of Credit Union B in reissuing a check for Amount D following Taxpayer A's timely request for a new check.

Therefore, pursuant to section 408(d) (3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a Rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxxxx
SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxx.

Sincerely yours,


for Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose